

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

ORIGINAL

77-1437 ~~77-1537~~

To be argued by
STANLEY M. MEYER

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 77-1537

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—against—

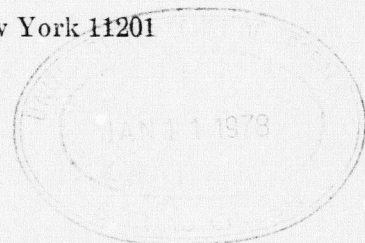
ANGELO LUIS ACEVEDO,

Defendant-Appellant.

**BRIEF AND APPENDIX
ON BEHALF OF APPELLANT**

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

Docket No. 77-1437

-against-

ANGELO LUIS ACEVEDO,

Defendant-Appellant

BRIEF ON BEHALF OF APPELLANT

PRELIMINARY STATEMENT

This is an appeal from a judgment of the United States District Court for the Southern District of New York, rendered on September 7, 1977, convicting appellant of dealing in fire arms without being licenced, in violation of Title 18 U.S.C., Section 922 (A)(1). He was convicted of three counts and he received a consecutive sentence of five years on each count making a total of fifteen years in prison by District Judge Duffy.

Appellant is incarcerated at the present time.

This case was tried from July 6th through July 11th before a Jury, Hon. Keven T. Duffy presiding.

STATUTES INVOLVED

18 United States Code Section 922

Unlawful acts

It shall be unlawful-

(1) for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of import-

ing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearms or ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that-

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing;

FACTS

The actual case began on July 6th when the trial of an indictment charging appellant with three counts of dealing in firearms without a license began. In his opening the United States Attorney described the charges and told the jury that the appellant was "a merchant of death because that is what guns do, that is what guns are used for" (6A)*.

The next day a motion for a psychiatric examination was denied. It seems that during the selection of the jury the appellant opened his pants, took his penis out and was about to urinate on the floor of the Courtroom. The court took the position that the appellant had appeared to "be street wise", and that his conduct has been responsive when he argued on his own behalf on the first date of trial why his bail should not be revoked due to a late appearance. The court decided that appellant's actions were intentional acts and an attempt to get a mis-trial. There is no reason to expect psychiatric problems (7A-8A). The defense counsel disagreed and said appellants acts were completely out of "A" references are to pages of the appendix.

character. The motion was renewed and the court adhered to its position (8A-10A).

Another side issue also developed. It seemed that about two or three weeks before the trial some agents saw appellant in his grocery store and attempted to purchase fire arms, recording the conversations between the parties. The United States Attorney who tried this case also directed this operation after the initial conversations. Defense Counsel argued that the Government had no right to approach Acevedo but the Government countered that it had no knowledge that it was the same man under indictment. The court, after much discussion, ruled that the tapes could not be used on a similar acts basis but there was no prohibition that the conversations could be testified to if the appellant took the witness stand (10-16, 20).*

The first actual trial witness was John A. O'Brien who testified that he waited outside of the appellant's grocery store on October 5, 1976 when an undercover agent went in to buy firearms (21-23). The undercover agent who went into to make the purchase was George A. McNenney and he went into the store with an informant.

The witness did not see what occurred in the store and the only thing he could testify to was that the undercover agent spent about 30 minutes in the store and that after he came out he turned over to the witness a 25 calibre revolver at a prearranged meeting place (24-26). The witness checked the records and determined that appellant had no license as a firearms dealer and a certified statement to the effect, was received in evidence (27-29).

On the following day, October 6, another alleged purchase

* Numerical references are to pages of Trial Minutes.

was made and the witness observed the undercover agent again spend about 30 minutes in the store. Thereafter, another firearm was turned over to him (32-33).

On November 4, 1976, a third buy was made in the same manner except that the witness stated that Acevedo walked out of the store with the agent and carried a package about three and one-half feet long, wrapped in some type of cloth. They opened the trunk of McNenney's auto and they put the object in (33-34). Later on, at the pre-arranged rendezvous, the undercover agent turned over a carbine rifle which was apparently the object that had been put in the trunk of the car (34-37). There was one further meeting on January 5, 1977, when the witness and McNenney both went to the store. McNenney went in while the witness remained in the car. McNenney came out and appellant was introduced to the witness as a person who was interested in doing business (37-38). Later on the witness actually made the arrest.

On cross-examination the witness admitted that the confidential informant went into the store along with agent McNenney on the occasion of the first buy. The informant left 10 minutes after they entered but the agent remained for approximately 30 minutes (12A-14A). On the other occasions the agent went to the store alone.

The next witness was George McNenney, the undercover agent who made the three arms purchases. The witness was born in Havana, Cuba, was fluent in spanish and used the code name "Chino" (64-66). He said on October 5, 1976 the occasion of the first buy, he was introduced to the appellant inside the store. The appellant said he had a hand gun

with ammunition for \$90. Appellant showed it, and the witness, after examining it, counted out the money and handed it over to Markie, a young fellow who was standing there (Joseph Mark Tolliver) (67-68). He gave the money to Mark, Mark counted it and gave the money to appellant (68). The following day, October 6, at about 11:20 A.M. the witness came back and purchased a 45 colt semi-automatic and seven rounds of ammunition for about \$180 (74-74). He went back on November 4, and was told by appellant that he had a rifle for about \$75. The witness bought it plus 63 rounds right on the spot (76). Thereafter, there was other discussions involving the possibility of appellant buying hand guns. Both men agreed to speak to their respective people about it but nothing came of it (78-79). Similar conversations which never resulted in any transactions, were also allowed in over objection even though they were beyond the scope of indictment (80-81).

McNenney also confirmed O'Brien's testimony that on January 4, he introduced O'Brien to appellant outside of the store as a man who wanted hand guns (84). The witness said that on November 5, appellant placed the rifle in the trunk of his car and that appellant had taken it out of the store under a coat (15A). This was contrary to the previous witness who said it was under a cloth (11A).

On cross-examination agent McNenney materially contradicted the former agent who testified. This witness said that the confidential informant remained in the store during the entire 30 minutes of the transaction although after the initial introduction he moved to the front of the store (16A). The previous witness said he saw the

the informant leave after 10 minutes. In fact, the previous witness had said that McNenney went in alone. Thereafter, the previous witness, O'Brien, was called by the Government and testified that his prior testimony was wrong and the informant really accompanied the agent on that first occasion (18A).

On cross-examination he said he spoke to the United States Attorney at lunch yet he was not told about the inconsistent testimony, the witness said he realized the mistake himself (128). He even said he corrected himself on the witness stand before lunch time that morning, an obvious lie (20A-21A).

Thereafter another agent, George Clifton Robinson, took the witness stand (132). He was the agent that met appellant two weeks before the trial, June 24, 1977 (137). Even though the court had ordered the Government not to introduce this subsequently transaction, the agent testified that he went to the store with another agent, unaware of the three previous sales. The only significant thing about his testimony was that the source of his information was different than that which caused the agent in the case at bar to make the purchases which were the subject of the indictment (22A). The obvious implication in this testimony was that appellant was a big dealer. At any rate that appellant told him that he could not do anything then because he had a problem (23A). The agent then became aware of the pending charges and never went back (140-141).

After the people rested the court stuck the entire testimony of Agent Robinson and the jury was instructed to disregard it (141-142).

The defense rested (152) and a lengthy colloquy ensued

with the appellant complaining that his attorney was not following instructions because he failed to call three witnesses whose names had been furnished by the appellant. The court directed that one of these witnesses be produced and after this was done further discussions were had between appellant and his attorney. The appellant accepted his attorney's recommendations, withdrew his request and the defense rested (37A,38A^{24A}).

In the Government's summation the prosecutor again told the jury that guns were instruments of death and were a plague on the city (39A). The prosecutor told the jury that they had heard an uncontradicted story (39A-40A), a statement which impelled comment by defense counsel in his summation (41A-42A).

In the courts charge, the Judge again cautioned the jury to forget Robinson's testimony (203). The court also found it necessary, to tell the jury not to speculate as to the purpose that guns were used for since, for example, they could be used in a play or a skit (43A-44A).

The case was then submitted to the jury and appellant was convicted of all three counts.

On September 7, 1977 appellant was sentenced to five years of prison on each count to be served consecutively. There was more discussion about the witness the appellant wanted to testify, and the fact that the witness had been in a murder trial at the time they tried to get him (45A). He would have said, that he had borrowed money from appellant, pledging the guns as collateral and that appellant only sold the guns to get his money back (46A). Hereto, the discussion was about the fact that appellant had wanted to testify, his attorney did not want him to.

POINT I

THE PROSECUTOR'S COMMENT TO THE
JURY THAT APPELLANT WAS A
"MERCHANT OF DEATH" DEPRIVED
APPELLANT OF A FAIR TRIAL.

Two times during the trial, once during the opening (6A), and once during summation (39A), the prosecutor told the jury that appellant was a "merchant of death" because he dealt in guns. This was so outrageous that the Court, in its charge, cautioned the jury not to speculate on the purpose for which the guns were being purchased since, after all, guns could be used in a play or a skit (43A-44A). In addition, one of the three purchases was of a rifle, which obviously could be used for hunting.

This was not a murder case, no one was accused of assaulting or shooting anyone and, in fact, the only evidence in the case showed that no one knew what the guns were being used for since the purchaser simply told appellant that he had to do what he had to do with them.

The prosecutor occupies a special position in the eyes of the jury who regard him with special confidence. Hall v. United States, 419 F.2d 582 (5th Cir. 1969). The authorities agree that he has a duty to be fair and avoid prejudicial arguments in his opening or closing remarks. United States v. Bugros, 304 F.2d 177 (2nd Cir. 1962); United States v. Gonzalez, 488 F.2d 833 (3rd Cir. 1973). He cannot offer his own opinions or attitudes, United States v. De Alesandor, 361 F.2d 694, cert. den. 385 U.S. 842 (2nd Cir. 1966); United States v. Burse, 531 F.2d 1151 (2nd Cir. 1976); United States v. White, 324 F.2d 814 (2nd

Cir. 1963), and he cannot make arguments regarding things which were not issues in the case. United States v. Lefkowitz, 284 F.2d 310 (2nd Cir. 1960); United States v. Burgos, supra. Where the prosecutor does violates the standards applicable to him and makes comments which are prejudicial the failure to object will not waive it because an objection cannot remove prejudicial material from the minds of the jury. United States v. Young, 463 F.2d 934 (D.C. Cir. 1972).

In the case at bar, a simple case of the sale of firearms, there was no need to label the appellant as a "merchant of death". Surely everyone knows what guns can be used for, good or evil, or, as the Court said, they could be used in a play or skit. There was no reason for such a statement and there was no reason to tell the jury that guns were a plague on the city (39A). This was not a situation where the devices or instruments were not known commonly so that explanations of their nature and seriousness had to be proffered. The only conceivable purpose that the prosecutor could have had in making those arguments was to influence and prejudice the jury. If this was not obvious, the Court would have had no need to charge the jury that they should not speculate regarding the use to be made of the guns (43A-44A) . The Court must have felt that the prosecutor crossed the line of propriety.

Additionally, the prosecutor also used language which can only be viewed as an oblique reference to appellant's failure to testify. The prosecutor told the jury that they had heard an "uncontradicted story" (39A-40A). Appellant is aware that this Court, as well as others, has held in many instances that such language, alone, is not

necessarily a comment on defendant's failure to testify, but, still, that principle is not applicable where the only evidence that could contradict the government's position is evidence that would have to come from the defendant. United States v. Rodriguez, 545 F.2d 829 (2nd Cir. 1976); United States v. Armedo-Sarmiento, 545 F.2d 785 (2nd Cir. 1976); United States v. Persico, 425 F.2d 1375, cert. den. 400 U.S. 869 and McIntosh v. United States, 400 U.S. 869 (2nd Cir. 1970); Desmond v. United States, 345 F.2d 225 (1st Cir. 1965); Leathers v. United States, 250 F.2d 159 (9th Cir. 1958). Still, even where such is not the case, the type of language used here is not regarded as preferred and it has been thought of as coming dangerously close to improper comment. United States v. Hooker, 541 F.2d 300 (1st Cir. 1976); United States v. Sanders, 547 F.2d 1037 (8th Cir. 1976).

In the case at bar, like the merchant of death comment, there was no need to tell the jury that the government's evidence was uncontradicted. The jury could draw those conclusions itself and the prosecutor's observation certainly did not add anything to his case. The only possible effect it could have had was to draw to the jury's attention the fact that appellant had not testified. Defense counsel made it clear that he thought that such a comment was wrong (41A-42A). The fact of the matter was that there was no way that the government's contentions could be contradicted except by appellant's own testimony.

The other person, "MARKIE", present at the first alleged sale, was an accomplice and he could not be compelled, even under subpoena to incriminate himself. Calling him as a witness would, therefore, be useless, assuming he was even available, a circumstance about which the

record is silent.

The other witness that the appellant tried to obtain was apparently the man who appellant claimed gave him the gun as collateral for a loan. The record of the trial and the comments made by substituted counsel at sentence do not paint a complete picture, but it seems clear that the proposed witness was a defendant in a State murder trial which was actually on trial at the time. Here, too, no one could force the witness to testify, so that the net result of the whole situation was that if appellant wanted to counter the government's case by giving his own side of the story, he could only do it by testifying himself.

By the time the closing arguments were made, the prosecutor was well aware of the situation and he knew that the only explanation could have, practically, come from appellant. Knowing this, the comment made had to be a reference to the appellant's failure to testify, and it violated Rodriguez and Arnedo-Samiento. The jury would have had to know that "MARKIE" was an accomplice, and they would have naturally only looked to appellant as the only one who could controvert the government's evidence.

POINT II

THE COURT SHOULD HAVE ORDERED A
PSYCHIATRIC EXAMINATION FOR
APPELLANT TO DETERMINE IF HE
WAS CAPABLE OF STANDING TRIAL.

Prior to the actual commencement of testimony, there was conduct on the part of appellant during the selection of the jury where he attempted to urinate on the floor of the courtroom. The jury selection was not recorded, but after the opening, a motion for a psychiatric

examination was denied. There was considerable colloquy, but the Court decided that the action on behalf of appellant was not the product of any mental infirmity, but was an intentional act in an attempt to obtain a mistrial. The Court thought that the appellant was street-wise, and when appellant argued on his own behalf why his bail should not be revoked due to a late appearance on his part, the Court concluded that appellant's arguments were cohesive and he was in complete control of his faculties. The motion was denied and the Court said there was no reason to conclude that there were psychiatric problems (7A-8A). Defense counsel disagreed with the Court's conclusion, but to no avail (8A-10A). One significant statement, however, was the fact that the lawyer told the Court that he had been representing the appellant since March 10, 1977, a period of some four months, and had interviewed the appellant many times, as well as having appeared in Court with him (8A). The attorney said that the conduct of the appellant during the jury selection was totally out of character based upon the attorney's dealings with appellant, and while the attorney had no psychiatric expertise, he made the application in good faith to show that the basis for appellant's conduct was mental rather than merely contemptuous disorder (8A-9A).

No one can really know at this point what motivated appellant, but just as the attorney was no psychiatric expert, neither was the Court. This Court has many times decided that where conduct suddenly occurs which would be unreasonable, or could be the product of a mental disorder, a hearing should be held to determine the facts. After all, if the appellant had been suffering from some type of mental disorder, there

could be a serious question of his ability to consult with his attorney and aid in his defense. Conviction of an insane person violated due process. Bishop v. United States, 350 U.S. 961; United States v. Sullivan, 406 F.2d 180 (2nd Cir. 1969).

This Court has decided some cases which have become leading authorities in the field of competency hearings, and the law has been well established that where there exists some doubt as to a defendant's mental status, a determination of his competency must be made for the taking of evidence and the holding of a hearing. Wojtowicz v. United States, 550 F.2d 786 (2nd Cir. 1977); Saddler v. United States, 531 F.2d 83 (2nd Cir. 1976); United States v. Polisi, 514 F.2d 977 (2nd Cir. 1975).

As this Court made clear in the Wojtowicz case, where the mental incompetency exists at the time of sentencing, a hearing must be ordered, so that there can be no doubt that when it occurs prior to the commencement of trial, there was even more reason to have a hearing, since the actual trial is much more important than the sentence procedure. In that case, the defendant attempted to take a drug overdose and slash his wrists on the morning of sentence. In Saddler, the Court received a presentence report indicating a history of mental illness, and in Polisi, the presentence report indicated that the defendant had been discharged from the Marine Corps after an emotionally unstable diagnosis. All of these cases show conduct prior to sentence which should have compelled the sentencing Judge to conduct hearings. In the case at bar, the trial did not have to even start once appellant engaged in his socially unacceptable conduct.

Appellant did not disturb the trial, since no witnesses had testified. The case was only in the jury selection stage, and if the Court committed appellant for observation, the only thing that would have occurred was that another jury would have been selected a few weeks later.

It is most respectfully suggested that the Court erred in this matter and that the conviction should be reversed, or at the very least, a retroactive psychiatric hearing should be held.

POINT III

APPELLANT WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE HIS ATTORNEY DID NOT PRESENT DEFENSES THAT APPELLANT WISHED TO SET FORTH.

Appellant is well aware that the right to counsel provided by the Sixth Amendment includes the right to effective representation rather than a meaningless formality of simply having a lawyer at his side. Avery v. Alabama, 308 U.S. 444 (1969); Barber v. Nelson, 451 F.2d 1017 (9th Cir. 1971).

Appellant is also aware that the only question to be resolved is whether the representation so violated minimum standards that the Trial Court should have taken notice of it as being a mockery as far as the defendant is concerned. United States ex rel Pugach v. Mancusi, 310 F.Supp. 691, aff'd. 441 F.2d 1073, cert. den. sub mon. Pugach v. McGinnis, 404 U.S. 849 (S.D.N.Y. 1970); Fimmand v. United States, 308 F.Supp. 938 (S.D.N.Y. 1970); United States v. Steed, 465 F.2d 1310, cert. den. 409 U.S. 1078 (9th Cir. 1972). Of course, the standards may be more stringent when retained counsel is involved, yet, still,

the representation may be so ineffective that it might still violate the Sixth Amendment as well as the due process clause. United States ex rel Pugach v. Mancusi, supra; Fimmand v. United States, supra; Arrastia v. United States, 455 F.2d 736 (5th Cir. 1972); Wilson v. Phend, 417 F.2d 1197, appealed after remand 457 F.2d 100, cert. den. 409 U.S. 881 (7th Cir. 1969); Blanchard v. Brewer, 429 F.2d 89, cert. den. 410 U.S. 1002 (8th Cir. 1970); United States ex rel O'Brien v. Maroney, 423 F.2d 865 (3rd Cir. 1970).

In the case at bar, while the conduct of counsel, as far as cross examination and his conduct at the trial is concerned, is unassailable, yet his failure to advance evidence he was requested to, creates a serious question of the quality of the representation.

The appellant complained that his attorney had not interviewed or obtained two or three witnesses he instructed him to get who would say that selling guns was not his business (24A). The lawyer had also failed to subpoena the significant defense witness who could allegedly say that he had given the guns to appellant only as collateral for a loan. The Court eventually aided in securing the attendance of that witness, who was actually on a murder trial at the time (36A), and he apparently refused to testify, but had contact been made earlier with this witness, as well as the others, counsel could have known the situation and the instant trial might not have commenced until the murder trial was over.

The desires of appellant were not sprung on his attorney during the trial because ACEVEDO had been telling his lawyer to do those things

prior to trial and he had steadfastly always maintained his innocence, a fact which his attorney acknowledged (30A). The lawyer also said that he had not known the last name of the witness until during the trial (26A-27A), yet the appellant complained that he had advised counsel where the witness resided, where his mother lived, yet the attorney had not tried to verify it (27A). The contentions of appellant that he wanted other witnesses called had previously been made known to the attorney (27A).

This Court usually will not interfere in matters of trial strategy, but we submit that when a defendant has a defense he wishes advanced, an attorney is bound to make every reasonable effort to comply with a defendant's wishes. The requests here were not unreasonable, and it is absolutely possible that appellant was telling the truth. It certainly seems that where an attorney undertakes to represent a defendant in a criminal trial, he should make every effort to prepare the defense along the lines desired by his client. After all, these were not phantom witnesses. "MARKIE" did exist and the other witness, the one who allegedly actually owned the guns, was found. It would seem that as far as representation was concerned, appellant was entitled to more.

POINT IV

THE SENTENCE IMPOSED WAS UNREASONABLE.

The Court imposed a five year sentence on each of the three counts of which the appellant was convicted, the sentences to run consecutively, making a total of fifteen years. When one reads the record, it is

abundantly clear the only reason such an extreme sentence was meted out was because of appellant's conduct in attempting to urinate on the floor during the jury selection.

It is most respectfully suggested that in light of all the cases cited in Point II herein, the Court erred in not ordering a psychiatric examination. After all, if appellant suffered from a mental condition, then his actions would not have been his fault.

CONCLUSION

THE CONVICTION SHOULD BE REVERSED
AND THE INDICTMENT DISMISSED.

Dated: Brooklyn, New York
January 6, 1977

Respectfully submitted,

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STANLEY M. MEYER
Of Counsel

1A

CRIMINAL DOCKET U.S. District Court

PECCY OFFENSE PO ☐ JUDGE MAGISTRATE Assigned U.S. **DOE, JOHN**
 OTHER MINOR OFFENSE MO **0208 1 0860** a/k/a Luis
 OTHER MISDEMEANOR MO ☐ Disposition **t/n Angelo Luis Acevedo**
 FELONY FBI ☒ District Office RAST FIRST MIDDLE

Case Filed Mo, Day **03 11** 77 0184 01
 No. of Dets ***01** JUVENILE

U.S. MAG. CASE NO. **77-37** (BAIL - RELEASE)

U.S. TITLE/SECTION **18:922(a)(1)** OFFENSES CHARGED **Unlawfully dealing in firearms.** ORIGINAL COUNTS **1-3**

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began 1/12/77	High Risk Date 3-11-77	Information 3-17-77	Trial Set For 7-5-77
Summons Served	Indict Waived	First Pmt 3-17-77	Verdict 7-6-77
First Appearance	In Charging District	Superseding Indict Info	Trial Began 7-11-77

SENTENCE **9-7-77**

Disposition of Charge **7-11-77**

Conditions **9-7-77**

AMT ☐ Fugitive ☐ Per. Recog ☒ PSA ☐

1,000 ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ 3rd Party Cust ☐ Other ☐

Superseding Counts

MAGISTRATE

Search Warrant	Issued	Return	DATE	INITIAL/NO	INITIAL APPEARANCE DATE	DATE	INITIAL/NO	OUTCOME
Summons	Issued	Served	1/11/77	MDJ-08AB	1/12/77	2/1/77		DISMISSED
Arrest Warrant Issued			1/11/77	MDJ-08AB				HELD FOR GU OR OTHER PROCEEDING IN THIS DISTRICT
COMPLAINT								HELD FOR GU OR OTHER PROCEEDING IN DISTRICT BELOW
OFFENSE (In Complaint)								

18 USC 922(a)(1) - UNLAWFULLY DEALING IN FIREARMS

U.S. Attorney or Asst **LEVITES, RAYMOND A.**
 791-1922 274

ATTORNEYS ☐ Defense ☐ CJA ☐ Ret ☐ Waived ☐ Sent ☐ None ☐ Other ☐ CD

A. Isadore Eibel 1346
 170 Broadway, N.Y.C. 10038
 227-6798 **MARTIN LIGHT**
 66 COURT ST. BROOKLYN, N.Y.

JUDGE DUFFY

E.F.

* Show last names and suffix numbers of other defendants on same indictment information

DATE	(DOCUMENT NO.)	PROCEEDINGS
1/11/77		Complaint filed, warrant issued.
1/12/77		Defendant presented, defendant to retain own counsel. Defendant released until 1/13/77 to make bail.
2/1/77		Defendant made bail, address: 307 E. 102nd St., N.Y.
3-10-77		CJA counsel assigned: Isadore Eibel, 170 B'way, NYC.
3-11-77		Indictment filed 77 Cr. 184.....Wyatt, J.
3-17-77		No appearance by deft. B/W Ordered. A not guilty plea is directed to be entered. Case assigned to Duffy, J. for all purposes.....Metzner, J.
3-17-77		Deft. (atty. A. Isadore Eibel present) B/W vacated. Bail fixed at \$1,000 PRB secured by \$100 cash, and Pre-trial services supervision.....Metzner, J.
3-17-77		Filed notice of appearance of A. Isadore Eibel as attorney for deft.

CONTINUED ON PAGE 2.

EXCLUDABLE JURY

7-11-77

A

IN OFF

77 CR 184

LETTER CODES

77 CR 184		IV. PROCEEDINGS (continued)		PAGE TWO		V. EXCLUDABLE DELAY		LETTER CODES	
DATE	DESCRIPTION	DATE	DESCRIPTION	DATE	DESCRIPTION	DATE	DESCRIPTION	DATE	DESCRIPTION
1-11-77	Filed the following papers received from Mag. Jacobs, (Mag. No. 77-37) criminal complaint, disposition wheel, financial affidavit, appearance bond in the sum of \$1,000 (\$100-cash) dated: 1-13-77 and Warrant of Arrest dated: 1-11-77.								
3-22-77	Filed CJA Form 20 COPY 5 approving payment to Isadore Eikel, 170 Broadway, NYC 10038 Dated: 3-10-77. GERSHON, U.S. MAG.								
5-13-77	PRE-TRIAL CONFERENCE HELD & CONCLUDED Re: Discovery. DEFT NOT PRESENT. DUFFY, J			3-5-13-77	E-1				
6-23-77	Case Called. DEFT NOT PRESENT. BENCH WARRANT ORDERED. Atty. Present A. Isadore Eibel. DEFT appears late. BENCH WARRANT VACATED. Bail now set at \$10,000 CASH/SURETY. DEFT REMANDED in lieu of Bail set. Defense moves for Bail application. After RE-consideration, Bail is restored to its original setting. DEFT DISCHARGED. Trial set for 7-5-77 10AM. DUFFY, J								
7-5-77	Atty. present-DEFT not present-Bench warrant ordered. Defts' bail REVOKED and forfeited. Bail set on bench warrant in the amount of \$250,000.00 Cash. DUFFY, J								
7-5-77	Atty. present-DEFT produced in Court on Warrant. Defense Counsel moves for a bail application. MOTION DENIED. Trial to commence 7-6-77.								
7-6-77	Atty. present - TRIAL BEGUN with a JURY of 12 with 3 Alternates. Interpreter JUANA GARCIA Sworn.								
7-7-77	TRIAL CONTINUED. Interpreter UNITA ADLER Sworn.								
7-8-77	TRIAL CONTINUED.								
7-8-77	Filed affidavit of A. Isadore Eibel, AUSA in support of a writ. RET: 7-11-77.								
7-11-77	Filed Govt's writ and affidavit re: Norman Bryan Writ Returned - Unexecuted - 7-11-77								
7-11-77	TRIAL CONTINUED. ALL SIDES REST. GOVERNMENTS SUMMATIONS DEFENDANTS SUMMATIONS COURT'S CHARGE. Jury Begins Its Deliberations at 3:10PM Note from Jury at 3:35 PM (Court Exhibit A) VERDICT - DEFT GUILTY AS CHARGED on ALL 3 COUNTS. JURY POLLED. JURY DISCHARGED. pre-Sentence report Ordered. SENTENCE Adjourned to SEPTEMBER 7, 1977, 10AM. DEFT CONTINUED REMANDED IN LIEU OF BAIL. TRIAL CONCLUDED. DUFFY, J								

CONTINUED ON PAGE NO. 3.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

B

77	184	1
yr.	Docket No.	Def

PROCEEDINGS (continued)		V. EXCLUDABLE DELAY			
DATE	(Document No.)	(a)	(b)	(c)	(d)
7-13-77	Filed Govt's Writ and Affidavit of A. Isadore Eibel, Atty for deft in re: <u>Norman Bryan</u>. with return- - The within named was picked up at Park 31, NY Supreme Court, NYC on 7-11-77 & he was returned to Park 31 on same day.				
8-1-77	Filed CJA 21 COPY 2 approving payment to: Lunita Adler, , interpreter, 69-17 Harrow St. Forest Hills, NY 11375, Dated: 7-11-77. DUFFY, J (mailed copy 1 to AO)				
8-1-77	Filed CJA 21 COPY 5 authorizing the expert service of Lunita Adler, interpreter dated: 7-8-77. DUFFY, J (mailed copy 4 to AO)				
9-8-77	Filed notice of appeal from judgment dated 9-7-77..Copy given to AUSA and mailed to deft c/o Martin Light, Esq. 66 Court St. NY Brooklyn, N.Y...				

AO 256A

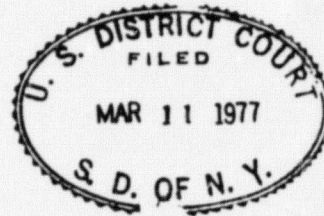
Interval (per Section 11)
Start Date
End Date
Ltr. Tot
Code Da

AO 256A

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA :

- v - :

ANGELO LUIS ACEVEDO, :

Defendant. :

INDICTMENT

77 Cr.

77 CRIM. 0104

The Grand Jury charges: *m 23*

On or about the dates hereinafter set forth,
in the Southern District of New York, ANGELO LUIS ACEVEDO,
the defendant, not being a licensed importer, manufacturer
or dealer of firearms, unlawfully, wilfully and knowingly
did engage in the business of dealing in firearms:

COUNT	DATE
1	October 5, 1976
2	October 6, 1976
3	November 4, 1976

(Title 18, United States Code, Section 922(a)(1).)

Marion J. Jordan
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

MICROFILM

DEFENDANT

ANGELO LUIS ACEVEDO

77 Crim. 184

DOCKET NO. >

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
September 7, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒

WITH COUNSEL

Martin Light, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYThere being a ^{jury} finding/verdict of☐ NOT GUILTY. Defendant is discharged☒ GUILTY as charged.FINDING &
JUDGMENTDefendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly
did engage in the business of dealing in firearms.**

(Title 18, United States Code, Section 922 (a) (1).)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

FIVE (5) YEARS on count 1.

FIVE (5) YEARS on count 2.

FIVE (5) YEARS on count 3.

Sentence on each of counts 1, 2 & 3 are to run CONSECUTIVELY
to each other. (FIFTEEN (15) YEARS TOTAL)SPECIAL
CONDITIONS
OF
PROBATIONADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend any period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified official.

1 el/lf

2 in that chair, and from the physical exhibits that the Court
3 in its discretion admits for you to consider.

4 At the risk of using a cliché, what the government
5 will prove is that in a kind of small-time way Angelo Luis
6 Acevedo was a merchant of death because that is what guns
7 do, that is what guns are used for. We are all here to do
8 justice. When this trial is over, in a day or two, hopefully,
9 because it isn't very complicated, and when you have heard
10 the law from his Honor and you retire to the jury room to
11 deliberate amongst yourselves, whatever may happen in the
12 course of these proceedings, keep your eye on the ball, the
13 only questions in this case: did the man deal in guns, did
14 he have a license to deal in guns? Don't decide this case
15 on whether you like me or don't like me, whether you like
16 Mr. Eibel or don't like Mr. Eibel, whether I am a particularly
17 good speaker, whether he is a particular good speaker. Don't
18 speculate about the unanswered questions with which every
19 criminal case abounds. Judge the defendant on the evidence.
20 Don't judge him on anything he does or says in the courtroom,
21 unless he says it under oath. Judge the defendant on the
22 evidence, that's all the government asks of you. Thank you
23 very much.

24 MR. EIBEL: If your Honor please, I will make a
25 brief opening statement.

el/lf

UNITED STATES OF AMERICA

vs.

77 Cr. 184

ANGELO LUIS ACEVEDO

July 7, 1977
10:15 a.m.

MR. LEVITES: May I put one or two matters on the record outside of the presence of the jury?

THE COURT: Sure.

MR. LEVITES: Your Honor, yesterday defense counsel made an application for psychiatric examination which your Honor saw fit to deny. The government concurs with that, of course. If defense counsel wishes to withdraw that application, we can proceed. But if not, I would respectfully request that the Court make certain findings of fact on the record as to the lucidity with which the defendant advanced arguments for change in his bail status and as to his behavior, his appearance on prior occasions before the Court, which gave no evidence of disorderly behavior.

THE COURT: There was absolutely no evidence of any disorderly behavior prior to this time, with the exception of a remark one time that he was remanded, that he was remanded for a short period of time. He commented, "What is this, Cuba," as he walked out. It was clear to me through-

1 el/lf

2 out the entire day yesterday that Mr. Acevedo is what
3 is called street wise. He may not have a formal education,
4 but he was trying to cause a mistrial throughout the en-
5 tire day yesterday. The fact that he opened his pants
6 and took out his penis and was about to urinate on the rug
7 in the courtroom yesterday while the jury was being picked
8 was clearly an attempt to irritate and annoy me and cause
9 a mistrial. He was held in contempt seven times yesterday
10 for the very simple reason, and it was clear to me, that
11 the man was lucid, knew exactly what he was doing, knew
12 exactly what he was attempting, and clearly was not in
13 need of psychiatric help. I gather that being street wise
14 means not only that the man learns law from the streets of
15 the city, but in this particular case from the training
16 in the area which he had while he resided in prison. I
17 see no reason whatsoever for psychiatric examination at
18 this time.

19 MR. LEVITES: Thank you.

20 MR. EIBEL: Your Honor, may I state for the
21 record in connection with that statement that has been
22 made and the finding, I have been representing this defen-
23 dant since March 10, 1977. I have interviewed him many
24 times. I have appeared with him in court otherwise. The
25 conduct yesterday in court over the sustained period was

1 el/lf

19

2 according to my experience with him, completely out of
3 character. I don't have any expertise in psychiatric
4 or other matters of a similar nature, your Honor. I was
5 motivated in a desire to protect the defendant, to ascertain
6 whether this manifestation had a basis other than just
7 contemptuous, and so I made the application.

8 THE COURT: Mr. Eibel --

9 MR. EIBEL: I'm not saying that your Honor is
10 criticizing me.

11 THE COURT: I certainly am not.

12 MR. EIBEL: I made the application in good faith,
13 I even renew it at this time, if your Honor were disposed
14 to entertain it. I think that based upon what I have said
15 so far, there should be an inquiry to ascertain whether
16 or not there is some basis for it, other than contemptuous
17 disorder.

18 THE COURT: All I have seen so far is contemptuous
19 disorder brought on by hostility, not only for the Court
20 and not only for me personally, I don't particularly care
21 about that, but for the Court and the system of justice
22 that we have. I don't see it as anything even coming close
23 to a manifestation of a psychological or psychiatric
24 breakdown. Under the circumstances, I guess formally I
25 will have to deny your second motion, also, for the same

1 el/lf

2 reasons. All right, Mr. Clerk, bring in the jury.

3 By the way, on the question of the tape, et cetera,
4 I guess I am not formally suppressing the admission, but
5 I am directing the government not to use it. The question,
6 however, arises whether they can use the incident leading
7 to that as a subsequent similar act. It appears that they
8 can, and under the Harris case, should the defendant take
9 the stand and testify inconsistently with the taped conver-
10 sation, the taped conversation apparently can be used for
11 impeachment. We will take that up as it comes, though.

12 MR. EIBEL: Your Honor, may I state at this time
13 my reading of the cases would indicate that the tape should
14 properly be suppressed, as your Honor is doing, and further,
15 that the entire testimony could not be admissible as a
16 similar act and it would only be admissible in the event
17 the government pursued the separate substantive charge.
18 The cases that Mr. Levites gave me indicated that it was
19 the basis for my position, the Hopper case, et cetera. I
20 respectfully object, sir.

21 THE COURT: Sure.

22 MR. LEVITES: Your Honor, if I may just briefly.
23 Would your Honor have any objection to briefly stating on
24 the record your reasons for your direction and also would
25 your Honor swear the interpreter before the jury is brought

1 el/lf

O'Brien-Direct

34

2 Q Did there come a time on or about November 4,
3 1976, when you had occasion once again to be in or around
4 the premises 1936 Second Avenue?

5 A Yes, sir.

6 Q Exactly what date was that?

7 A November 4, 1976.

8 Q Thank you. Would you tell the Court the
9 members of the jury what happened on November 4th, approxi-
10 mately a month after the events of October 6th?

11 A Yes, sir. On that date at approximately 12:30
12 in the afternoon I once again went to that location at
13 1936 Second Avenue with several agents from my squad and
14 Special Agent McNenney. Special Agent McNenney once again
15 in his own vehicle arrived at the store, entered the store,
16 stayed for approximately half an hour, came out of the
17 store. When he came out of the store he was with another
18 individual who was carrying a package approximately three
19 feet long, three and a half feet long, wrapped in some type
20 of cloth. They walked over to the trunk of Special Agent
21 McNenney's vehicle, which Special Agent McNenney opened.
22 They both bent over the trunk, they put the object in the
23 trunk, the trunk lid was closed. One individual walked
24 back into the store. Special Agent McNenney got into his
25 car and proceeded to leave the area.

1 el/lf

O'Brien-Cross

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2 the confidential informant.

3 THE COURT: Let's see if we can formulate a
4 question around that.

5 MR. EIBEL: May I state briefly, your Honor,
6 on direct, I'm not talking about what my questioning brought
7 out, but O'Brien said that McNenney went in alone,
8 came out 30 minutes later and handed him an object.

9 THE COURT: Well, didn't hand it directly.
10 Went down to 94th Street

11 MR. EIBEL: Gave him an object later. As a
12 result of my questioning, it now appears that there was
13 somebody else present besides the two principals, the
14 purchaser and the seller. If there was a third person
15 present, I am entitled to know if that was the informer.

16 MR. LEVITES: No, you are not. You are entitled
17 to know if there was another person there.

18 THE COURT: Let me think about it. I will give
19 you a ruling. You have 15 minutes.

20 (Recess)

21 THE COURT: Read back the last question.

22 (Question read)

23 THE COURT: I will permit it.

24 MR. LEVITES: A yes or no answer, your Honor?

25 THE COURT: Yes. Bring in the jury.

el/lf

O'Brien-Cross

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(The jury entered the courtroom.)

THE COURT: Ladies and gentlemen, I told you once before that these objections and side bar conferences are matters of law. Don't speculate as to the reasons for them.

Read back the last question.

(Question read)

A No.

Q For the purpose of refreshing your recollection, we are talking about October 5, 1976, that incident, right?

A That's correct, sir.

Q Did McNenney exit alone? I know you said he was there about 30 minutes.

A That's correct. About 30 minutes.

THE COURT: Did he come out alone?

A Yes, he did.

Q Did the person who went in with him remain there or did he come out before McNenney?

A I believe he came out before.

Q About how long?

A Ten minutes, perhaps. Ten minutes after they had entered the store.

Q Do you know who the person was?

MR. LEVITES: Objection.

THE COURT: He can answer yes or no.

A Yes.

Q Was it the confidential informer?

MR. LEVITES: Your Honor --

THE COURT: I am going to let it go this time.

MR. LEVITES: I respectfully object, your Honor,
for the reasons I stated.

THE COURT: I understand. Go ahead, answer it.

A Would you repeat the question?

(Question read)

A Yes.

Q With reference to the incident on October 6,
1976, did Special Agent McNenney go into the store alone
this time?

A Yes, sir.

Q And he remained how long?

A Approximately 30 minutes.

Q And he exited alone?

A Yes, that's correct.

Q The incident on November 4, 1976, did he go
in alone?

A Yes, sir.

Q And he exited alone?

A That's correct.

1 el/lf

McNenney-Direct

8 5

2 Q O'Brien was the agent who effected the arrest,
3 was he not?

4 A Yes, he was.

5 Q He had never seen Acevedo up close before, had
6 he?

7 MR. EIBEL: Objected to; leading, your Honor.

8 THE COURT: Yes.

9 Q Had he ever seen Acevedo up close before?

10 A I don't believe he had, no.

11 Q On November 4th, the day of the sale of the
12 rifle that you testified about, tell us how the rifle
13 left the store after you purchased it.

14 A After I purchased the rifle, Luis asked a woman
15 in the store, which I believe was his wife, I'm not sure,
16 for a coat, a winter coat. He took the coat and he
17 wrapped the rifle in the coat. He brought it out to the
18 car. I opened the trunk. He placed it in the trunk.
19 He took the coat back and went back into the store.

20 Q That was November 4th. On October 6th when you
21 bought the .45 caliber pistol you testified about, how did
22 you carry the gun out of the store?

23 MR. EIBEL: If your Honor please, that has
24 already been testified to.

25 MR. LEVITES: You haven't heard the question yet.

el/lf

McNenney-Cross

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and he went to the front of the store. There was a number of people at the front of the store and he was talking to a number of people.

Q How far was he from you?

A We were pretty much in the back of the store, he was in the front of the store. If you are asking for feet, I really don't know.

Q Ten feet, 20 feet, 50 feet?

A Gee, I really don't know, counsel.

Q How long did he stay there?

A He stayed until I left.

Q You left the store with him?

A Yes, I did.

Q How long did you stay in the store?

A I stayed, I would say, approximately 15, 20 minutes or so.

Q I'm talking about October 5, 1976.

A Yes.

Q Did you see him all the time you were in the store, I am talking about the confidential informer.

A I glanced at him quite a few times. I would say the times I looked at him he was in the same area in the front of the store.

Q He was in sight, is that right?

1 el/lf

2 A Yes.

3 Q Did he have any further conversation with the
4 defendant?

5 A At the end he might have said, you know, good-
6 bye, I will see you in a little while, something to that
7 effect. I don't believe he had any private conversations.

8 Q But he was there all the time that you were
9 there, and you both left the store together, is that right?

10 A Yes, that's correct.

11 Q That is the only time that the informant went
12 to the store with you, is that right? That day, October
13 5th?

14 A That's correct.

15 Q 1976?

16 A As far as I recollect, I believe October 5th
17 was the only time, yes, sir. The first occasion.

18 Q On October 5th what was the weapon that was
19 purchased?

20 A .22 caliber handgun, six shot.

21 Q What kind of a gun was it?

22 A It's a Rome Burgo.

23 Q Where was it displayed to you, in the front of
24 the store or in the back?

25 A It was displayed in the back. I was on the

- 1 el/lf
- 2 A Yes, sir.
- 3 Q Was that correct?
- 4 A No, it's incorrect.
- 5 Q How is it incorrect?
- 6 Q When Special Agent McNenney entered 1936 Second
- 7 Avenue, he was with another individual.
- 8 Q The first day?
- 9 A On October 5, 1976, yes, sir.
- 10 Q Was that individual an agent?
- 11 A No, sir.
- 12 Q Without giving us the name, who was that individual?
- 13 A The individual was a confidential informant.
- 14 Q Now, you testified also that the last buy you
- 15 covered was November 4th, is that correct?
- 16 A That's correct.
- 17 Q On January 5th, you met the defendant for the
- 18 first time personally?
- 19 A That's correct.
- 20 Q When did you apply for the warrant?
- 21 A January 11th of 1977.
- 22 Q When did you execute the arrest?
- 23 A On January 12th of 1977.
- 24 Q Was there any particular reason why you waited
- 25 from November 4th until January 5th to make the arrest?

el/lf

O'Brien-Direct

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MR. EIBEL: I object to the question.

THE COURT: January 5th? He didn't make the arrest on January 5th.

MR. LEVITES: Just to make the identification --

THE COURT: I already ruled on that this morning. The same ruling stands.

MR. LEVITES: That's all.

CROSS EXAMINATION

BY MR. EIBEL:

Q Officer O'Brien, did you speak to anybody after you left the stand?

A Yes, sir.

Q Who?

A I spoke to Mr. Levites at lunch.

Q Did you speak to Special Agent McNenney?

A Yes, sir.

Q Did you discuss the testimony you have just given as to who went in?

A No, sir.

Q When did you realize for the first time that you made an error?

A This morning when I was still on the stand.

Q How did that come about?

A I feel I misinterpreted your question -- Mr.

el/lf

O'Brien-Cross

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you brought it out --

Q Just now?

A No, you questioned me about this earlier.

Q Let me understand. It may be my confusion.

I don't want to add to yours, so I will start again.

When you testified this morning, you testified on direct examination that Mark entered the store alone the first time?

A That's correct.

Q You made no mention of the confidential informer?

A That's correct.

Q When I cross examined you that morning --

A This morning.

Q This morning, did I ask, did you correct yourself then or did you say as to that first occasion, only Mark entered the store?

A I know I corrected myself on the stand.

Q This morning?

A This morning, yes, sir.

Q I'm sorry --

A I'm not sure whether it was Mr. Levites or yourself who was questioning me but I corrected myself, because one of you drew out the fact when you had the side bar with his Honor there.

1 el/lf

O'Brien-Cross

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2 Q If you corrected yourself this morning, why are
3 you testifying now?

4 A Mr. Levites brought me back on.

5 Q Just to say that you corrected yourself this
6 morning?

7 A That's correct.

8 MR. EIBEL: No further questions.

9 THE COURT: Step down. Is that it?

10 MR. LEVITES: This is one inaccuracy.

11 REDIRECT EXAMINATION

12 BY MR. LEVITES:

13 Q Counsel for the defendant asked you whether you
14 had discussed this case in the -- first he mentioned me and
15 then he mentioned Special Agent McNenney at lunchtime.
16 He then asked you had you discussed the facts of the case
17 and your testimony, and you said no. I take it you meant
18 with Special Agent McNenney, but you did discuss it with me?

19 A Yes. I said I discussed it with you but not about
20 Special Agent McNenney, the facts.

21 Q And I told you that I was going to recall you to
22 clarify, did I not?

23 A Yes, that's correct.

24 MR. LEVITES: That's all.

25 MR. EIBEL: I didn't intend any aspersion on counsel.

1 el/lf
2 A We went to purchase --

3 MR. EIBEL: I object to the form of the question.

4 THE COURT: The form is bad.

5 Q Were you in the course of your official duties
6 conducting firearms investigations?

7 A Yes, sir.

8 Q At the time you went there, were you aware of
9 the dates of the three alleged transactions that took
10 place here? Did you know about the three buys that had
11 gone down, at the time you walked in there?

12 A No, I didn't.

13 Q Was your source of information different than
14 the source of information, if you know, if you know personally,
15 was the source of information that caused you and Cole to
16 go there independent and different from the source of
17 information than the source of information that caused
18 McNenney and O'Brien to go there?

19 MR. EIBEL: I object to it. Calls for a conclu-
20 sion.

21 THE COURT: Yes, but I will permit it, though.

22 A Yes, it was.

23 Q Can you tell us what happened on June 24th?
24 Before you do, where is Agent Cole now?

25 A He is on his honeymoon.

el/lf

Robinson-Direct

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Q The defendant said to Special Agent Cole, "I have nothing for you now"?

A Yes.

Q Did the defendant indicate that there might be a time when he would have something?

MR. EIBEL: I object to that, your Honor.

THE COURT: Yes.

MR. LEVITES: I withdraw that.

MR. EIBEL: I object to the leading.

THE COURT: Do it again.

Q He said he had nothing for Cole then. Did he say anything else?

A Yes. That we should see him next week and he may have something for us then. He was not able to do anything at that time because he had a problem.

MR. LEVITES: Thank you.

Q There came a time when you -- did there come a time when you became aware that the defendant was about to engage in these proceedings that were going on here now?

A Yes, I did.

Q Having become aware of that, did you then go back and attempt to conclude the transaction that you were setting up?

MR. EIBEL: I object to the form of the question,

MR. EIBEL: Your Honor, at this time, having advised and consulted with the defendant, the defense rests.

THE COURT: All right. We will do it with the jury in. Bring in the jury. Apparently we are still missing a juror.

MR. EIBEL: Judge, may the defendant address you?

THE COURT: Yes.

THE DEFENDANT: Tell the judge that the lawyer does not wish to, he does not want to follow my instructions. He doesn't want to do what I tell him to. I have here two or three witnesses who will testify that to sell firearms is not my profession. Those people who I have ready will show to the Court what I do for a living. I am also giving my attorney the name and the last name of the fellow that gave me the firearms, but this fellow, that young fellow who is a prisoner now at Riker's Island, he is the one that brought the pistol to me, and he borrowed some money from me. Since he did not have the funds to return whatever I lent him, he gave me the pistol and he was supposed to redeem it in three or four weeks. But he did not do so. Then he wanted me to give him the pistol so that he may sell it. But I refused to do that. I said that it cannot be so. Then he started looking for anyone who wishes who would buy the pistol. Then he found this fellow

1 el/lf
2 who supposed to be a federal agent, he brought him to
3 me and he introduced him to me. He asked me again that
4 he wanted to convince me that in truth was going to
5 sell a pistol. I said that the only thing I was interested
6 in the money that I gave him. But he didn't have it. So
7 the man asked him how much money did he have to give him.
8 Then the man gave me the money and I gave him the pistol in
9 a bag. He told me that he was a friend of his for a long
10 time. The three times the same thing happened. They
11 were friends, they were always together. Then when they
12 arrested me I came out of there and I saw the fellow. He
13 told me that he did not know that the man was a federal agent,
14 that the man bought him drugs and this is what, in effect,
15 happened. So the fellow said that if I needed him I could
16 count on him. But the man is in Riker's Island. I spoke to
17 the fellow's mother and the mother threw him out on the
18 street because he stole from her things also. And I think
19 that she was the one that put him in jail. I am telling
20 my attorney all these things, but he won't move, he won't
21 budge. And that is why I asked the Court that the lawyer
22 should help me. But he is not helping me. Now he wants me
23 to finish the case without me having the opportunity to
24 defend myself. And the fellow that was working with me,
25 that he is supposed to be Markie, the man is afraid because

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1 he mixed him up, because he gave him one of the revolvers.
2 That is what the man tells me. And he is afraid to help
3 me. He works with me for a long time, he has been working
4 with me for a long time and he knows everything that
5 happened. So I am asking the Court to ask my attorney to
6 help me in the things that he is supposed to do. I gave
7 the name, the last name and I told him where the fellow
8 is. And I also said where he lives. But he doesn't want
9 to budge.
10

11 MR. EIBEL: Your Honor, the name of the person
12 was supplied to me for the first time this morning, and
13 his location for the first time this morning. I was told
14 he was confined to Riker's Island. I do not know what the
15 witness will say or whether he will testify at all.
16 I explained this to the defendant and his family and they
17 suggested to me that I should grant him immunity to compel
18 him to testify. I said I had no such power, nor could I
19 compel anybody else to grant immunity, and that I would be
20 very reluctant to put a witness on the stand whose testi-
21 mony I did not know the substance of, nor whether he would
22 so testify. I also spoke to Markie briefly, who indicated
23 to me an extreme reluctance to do anything, even to respond
24 to me. I have no idea whether he would testify. Your Honor,
25 I am prepared to defend the defendant and to complete his

1 el/lf

2 defense. I have strong feelings about my advice to him,
3 which I have stated on the record. However, if he wishes me
4 to do something within the compass of my competence and pro-
5 fessional authority, I am prepared to do so.

6 THE COURT: You certainly can't grant anyone
7 immunity, that is for sure.

8 THE DEFENDANT: I didn't give him the last name
9 of the fellow because I didn't know it. But now that they
10 arrested me and I came out on bail, I have been talking
11 to my lawyer about it and I told him also where the fellow
12 resides, where he lives, and where his mother is. But he
13 hasn't moved to go there and verify it. My brother-in-law
14 got his last name yesterday and he spoke to his mother.

15 MR. EIBEL: The existence of this possible wit-
16 ness was mentioned to me a long time ago, without any name,
17 without any address, without any place I could find him, nor
18 did the defendant himself know where he was. As I stated
19 before, the first indication was when I was told this
20 morning his full name and his location.

21 THE DEFENDANT: I gave you his name before when
22 I came out from bail.

23 MR. EIBEL: I have already made a contrary state-
24 ment.

25 THE COURT: I know. Do you want to be heard?

1 el/lf

2 MR. LEVITES: Yes. I am sure that if I understand
3 what Mr. Acevedo is saying, and I will set aside for the
4 moment the government's position as to whether that which
5 he has chosen to tell the Court here should be admissible
6 in evidence as part of the government's re-opened case,
7 setting aside that question for the moment, if in the
8 representation he's made, it is that while admitting posses-
9 sion of the firearms in violation of state law,
10 it is some kind of entrapment theory in that the government's
11 confidential informant, and I take it that is the individual
12 he is referring to, really is the owner of the guns and gave
13 him the guns to hold and then brought the agent who allegedly
14 was giving the informant drugs in the store to entrap Mr.
15 Acevedo. That is obviously a very grave allegation. And
16 while I really personally and professionally feel that it
17 would be in many respects desirable to bring these proceed-
18 ings to a close today if that could be done, I am willing to
19 undertake if the defendant through his attorney wishes to
20 communicate these things to the agent, I'm sure your
21 Honor would grant defense counsel a subpoena with the name
22 of the individual, to bring the individual, to have the
23 person writtten from Riker's Island.

24 THE COURT: I guess he'd have to have a writ ad
25 testifilandum.

2 MR. LEVITES: The government obviously is not going
3 to attempt to immunize the defense witness for this, but if
4 he has the name, we'll get the body, if it can be had.

5 THE COURT: I'm sure the Court will grant the
6 writ.

7 MR. EIBEL: May I state in fairness to the defen-
8 dant, that that has been his position all along. But the
9 implementation of it was never furnished to me before.
10 And I am prepared to act accordingly.

11 THE COURT: All right. Fine. Under the circum-
12 stances, why don't you fellows draw up a writ
13 There is no other way of doing it. And have it returnable
14 here at ten o'clock on Monday. That is the best we can do.
15 There is no way --

16 THE DEFENDANT: I want to tell something to the
17 judge. Tell the judge that the lawyer is lying. Because
18 I told him that before. I am saying that the federal agent
19 gave drugs to the fellow because this is what the guy told
20 me. And Markie spoke to that fellow and he corroborated the
21 statement and Markie told me that the fellow told him that
22 the federal agent gave him drugs but Markie is afraid to
23 help me because the federal agent tried to put him, to
24 squeeze him into the case, and he tried to involve him in
25 this case. And he certainly is afraid. But Markie has been

1 el/lf

2 working with me for a long time and he knows what happened.
3 And he knows what I do for a living.

4 MR. LEVITES: Your Honor, obviously Mr. Eibel
5 has the subpoena power as I do. Mark Tolliver has been in
6 court. If he wants to put him on the stand, he can
7 attempt to elicit from him anything he wants.

8 THE COURT: But Mr. Eibel also has a professional
9 responsibility to know what Markie is going to say when he
10 puts him on the stand. I understand that. It's pretty
11 hairy to put someone on the stand without knowing what
12 they are going to testify to.

13 THE DEFENDANT: My wife has a store and I have a
14 restaurant, and I work since nine o'clock in the morning to
15 two or three at night. I am always working. I don't
16 sell drugs, I don't use drugs, I don't drink rum, I don't
17 drink beer. All I do is that I work a lot because I like
18 money and I like to live well.

19 MR. LEVITES: Let me make one request, your
20 Honor. I would just -- this is something perhaps that
21 might have been done before. Though it's not required, I
22 think the defendant should be put on notice by the govern-
23 ment that subsequent to his arrest he executed a sworn
24 document stating that he was a person with no financial
25 means, and based on that document the United States magistrate

1 el/lf

2 directed that the government of the United States could
3 pay the expenses of his defense. When he was taken into
4 custody, he had \$1300 in his pocket. It is apparent
5 that his wife owns the store in which he works and that he
6 has had sufficient funds to open a restaurant, and that
7 the possibility exists that additional charges may be brought
8 against him for falsely representing to the government that
9 he had no money, and he should bear this in mind with
10 reference to what he says here.

11 THE COURT: Okay.

12 THE DEFENDANT: When they arrested me, at that
13 time I had to close the restaurant because I did not have
14 the money and the store was just folding, because I owed
15 the government about \$5000. I also owed a friend and I
16 had a truck that cost about \$7000 that I had to sell. I
17 also had a van that I also was forced to sell, and that is
18 where I put all this money together and last month I opened
19 the restaurant. When they arrested me, I had no money.
20 What I have is a lot of debts.

21 THE COURT: I'm not going to try that case now.
22 Monday morning at ten o'clock. I better go in and tell the
23 jury what's going on. Does anyone object to me going inside?

24 MR. LEVITES: No, your Honor.

25 MR. EIBEL: No, your Honor. Do you want Markie, too?

1 el/lf

2 THE COURT: Markie is coming back here at ten
3 o'clock.

4 MR. LEVITES: I only request what you tell them,
5 it be on the record.

6 THE COURT: Oh, sure. Bring them out.

7 MR. LEVITES: Would your Honor also take steps
8 to direct that Mr. Tolliver return here.

9 THE COURT: I already did.

10 MR. LEVITES: All right.

11 (The jury entered the courtroom.)

12 THE COURT: Ladies and gentlemen, I told you that
13 we would have conferences outside your hearing from time
14 to time on matters of law and logistics. Logistics is a
15 phrase I borrow from days way back when in the service which
16 means getting something in the right place at the right
17 time. Unfortunately, my logistical prowess today has hit
18 a snag, and because it has hit a snag, this case will go
19 forward at ten o'clock on Monday, which means you are going
20 to have to take today off. I'm sorry. I recognize that
21 you have all come back from a long distance. It's something
22 I just cannot control. So have a delightful weekend, please
23 keep your mind open. Monday I think the case will be wound
24 up. Thanks a lot.

25 (The jury left the courtroom.)

1 el/lf

2 MR. EIBEL: Your Honor, without belaboring the
3 point, aside from being called a liar just a moment ago,
4 I have just been accused of selling out the defendant. I
5 find it very difficult to continue. I am aware of the
6 posture of the matter now, and I would respectfully request
7 that I be relieved and that the defendant have whoever else
8 he wants, but certainly not me. I have tried, but apparently
9 I cannot be of any help.

10 THE COURT: Mr. Eibel, we have no record made
11 here. If I appointed an attorney until Monday, we would
12 have to get a record out. It's a practical impossibility.
13 I know the anguish this is putting you through. I know of
14 no other way to go forward. I think this is one more ploy
15 on the part of the defendant to delay and exacerbate the
16 delay in this case.

17 THE DEFENDANT: May I address the Court?

18 THE COURT: Sure.

19 THE DEFENDANT: Tell the judge that I feel that
20 the attorney, that he helps me a lot of things, but in other
21 things, in a lot of things he ignores me. And I am facing
22 a case that is, maybe that will punish me for a long time.
23 And if I don't defend myself no one is going to do it
24 for me. And then the attorney sometimes exaggerates because
25 he does not want to do the things that I wish for him to

1 el/lf

2 tell his Honor. The lawyer, I believe, so far has defended
3 me very well from a legal point of view in front of the
4 Court. But for some reason somehow he does not get along
5 with me, because maybe he thinks that I am a tough type.

6 This is not what I want. What I wish is that he should
7 represent me the way he should and he ought to listen to
8 what I say, because this will help the case. I don't have
9 anything against him that he should continue representing
10 me. I accept that he should represent me.

11 THE COURT: Okay.

12 THE DEFENDANT: And that is why I am saying to
13 the judge what I feel. If I have offended him in any
14 manner or if I have hurt his feelings by the words what
15 I uttered, I ask to be forgiven.

16 THE COURT: Fine. I will see you back here at
17 ten o'clock on Monday.

18 THE DEFENDANT: Then I also thank the judge and
19 I wish his Honor to forgive me for the way I behaved in
20 front of the Court.

21 THE COURT: Okay.

22 The record should reflect that the discussion by
23 the defendant in Spanish was half in English and half in
24 Spanish. See you at ten o'clock on Monday.

25 (Adjourned to 7/11/77 at 10:00 a.m.)

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2 UNITED STATES OF AMERICA

3 vs.

77 Cr. 184

4 ANGELO LUIS ACEVEDO

5 July 11, 1977
6 10:35 a.m.

7 (In the courtroom in the absence of the jury)

8 THE COURT: Look, I understand that the witness
9 that the defendant wished to have here is presently over in
10 Supreme Court, is that correct?

11 MR. LEVITES: Part 31, 100 Centre Street.

12 THE COURT: You used to be over at the D.A.'s
13 office. Go over and get him.14 MR. LEVITES: If he is not on trial on his own
15 case, I will, your Honor.16 THE COURT: Obviously if he is not on trial on his
17 own case.18 MR. LEVITES: We will go over. Shall we put
19 it over for one hour?

20 THE COURT: Yes.

21 MR. LEVITES: Do you want the jury brought in,
22 your Honor.23 THE COURT: No. The clerk will tell the jury
24 that I am involved in something else that came up, and they
25 can sit and relax.

1 el/lf

2 MR. LEVITES: We will call you as soon as we get
3 back.

4 THE COURT: Good.

5 (Recess)

6 (11:40 a.m.)

7 (In the courtroom in the absence of the jury)

8 MR. LEVITES: Your Honor, I have secured the
9 witness, I have interviewed him, Mr. Eibel, counsel for the
10 defense, has interviewed him. I don't know whether Mr.
11 Eibel intends to call him or not. The government might
12 call him, and I am waiting defense counsel's pleasure.
13 I understand there was some discussion between counsel and
14 his client in reference to a plea, but I don't know.

15 THE COURT: What about it?

16 THE DEFENDANT: Tell the judge that the witnesses
17 that I have were not present when the actions of this
18 fellow, the only thing that those witnesses can declare is
19 vouch for my permit and what I do to make a living. Since
20 I have a business, all that I have done is to work, I
21 have been doing work for two or three men. And I find myself
22 in a situation in which the whole world, everybody is against
23 me and, therefore, I have no other recourse that my
24 attorney should decide what is best in my interest. And,
25 therefore, my attorney tells me that I should rest the case,

1 el/lf

2 finish the case and that the jury should decide whether I
3 am guilty or innocent. Because the people that were working
4 for me that are in the case of this fellow, and the only
5 guy that was present when the fellow came to me and gave
6 me the rubbish, that refuse, the only fellow that was present
7 when this fellow gave me that rubbish, is a minor and he is
8 afraid that he will be embroiled in that thing. And as I
9 am a man straightforward, I am disposed to take what comes to
10 my personality. And so I allow that should be decided what
11 they wish from me.

12 MR. EIBEL: Your Honor, on behalf of the defendant,
13 the defendant rests.

14 MR. LEVITES: Your Honor, if I may, if your Honor
15 has no objection, I would respectfully request permission
16 to re-open the government's case and call this witness,
17 the government witness, and only for the following reason:
18 because the defendant in a statement last week that the
19 confidential informant, Mr. O'Brien, had allegedly entrapped
20 him in that the confidential informant, the defendant
21 asserted, gave him, the defendant, three weapons which are
22 in evidence as collateral for a loan, and he asserted that
23 he was only holding these guns as collateral for monies he
24 had advanced this individual, and that the individual in
25 effect, though the defendant didn't use the word,

1 el/lf

2 of the phrase. But under that same standard, the words
3 "reasonable doubt," every day in courtrooms all around
4 the country, people are convicted under that system.

5 If the government would have to prove the guilt
6 of any defendant beyond all doubt, nobody would ever be
7 convicted of any crime. Certainly as his Honor will tell
8 you, you can appreciate the fact that however difficult it
9 may be to convict a person, that doctrine ought not be used
10 by you to avoid the performance of an unpleasant duty. There
11 are times that life impels people to perform unpleasant
12 acts, something they might not otherwise wish to do. When
13 you were selected as jurors, you swore an oath to do this
14 very difficult job, and I expect no less of you.

15 You might, when you are deliberating on the evi-
16 dence, look at the guns, which are nothing more or less than
17 instruments of death, and think what they are used for,
18 what people who buy them do with them, what a plague they
19 are on this city, what they have done to the city already, and
20 what they might have done if they were out on the street in
21 the wrong hands. Perhaps that will assist you in deepening
22 the resolve you need to do what you have to do. You are
23 compelled to do nothing by me, but by the evidence. What
24 you heard from the witnesses was an uncontradicted and
25 entirely truthful story. Uncontradicted by any evidence in

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2 this case to the contrary as to the defendant's guilt. It's
3 very simple. In order for you to believe that the defendant
4 did not commit the crime of which he is accused, you must
5 accept the fact that Agent McNenney and Agent O'Brien are
6 lying through their teeth. That is it. Either they are
7 telling the truth, in essence, or they are not.

8 You know that Agent McNenney testified that on
9 October 5, 1976, acting in an undercover capacity and with
10 an informant from the 23rd Precinct, who knew the neighbor-
11 hood, he went into Morrero's grocery store at 1936 Second
12 Avenue, that he engaged the defendant in conversation, that
13 during this time Special Agent O'Brien, who was the case
14 officer, was in the car, with an agent from the Housing
15 Authority. O'Brien advanced McNenney his own money to use
16 for the purpose, Government's Exhibit 22 in evidence, that
17 he brought the gun for \$90; that there was some conversation
18 with the availability of a .45 caliber pistol, also now in
19 evidence.

20 You know that later that day, still October 6th,
21 late in the afternoon, McNenney went back to -- excuse me,
22 still October 5th, late in the afternoon, McNenney went
23 back to the grocery store and saw James Mark Tolliver, the
24 young man who was brought out and identified by Special
25 Agent McNenney, and Tolliver, who worked in the store with

1 el/lf

2 City of New York by your verdict that protection which the
3 fair but forceful endorsement of the law will secure for
4 them and for you.

5 Thank you.

6 THE COURT: Mr. Eibel.

7 MR. EIBEL: Your Honor, Mr. Levites, ladies and
8 gentlemen of the jury.

9 I want to thank you for your kind consideration
10 and ask you, while it hasn't been a long case, as Mr. Levites
11 said, it is a case that required careful attention.

12 At the outset, there are several things which have
13 been said which I'd like to correct. You have been called
14 judges, you have been called ministers of justice, as if
15 you are a part of the administrative branch of the United
16 States Government. Just as the prosecution is, or the
17 judge is. You are not ministers of justice, you are not
18 judges. You are triers of the fact. What you determine from
19 what you have heard from that witness stand and what exhibits
20 you have looked at becomes fact. Up until that determina-
21 tion, beyond a reasonable doubt by all of you, there is no
22 fact. There is just assertions. There has also been said
23 that all of this evidence is uncontradicted.

24 His Honor will tell you, and you have been told,
25 and I will stress again, the charge is made by the government.

1 el/lf
2 The charge must be proved beyond a reasonable doubt by the
3 government. The fact is that whether uncontradicted or not,
4 if the testimony is not accepted by you in whole or in part
5 of essentials necessary to prove the crime, the government
6 hasn't proved its case, whether they present uncontradicted
7 evidence or any other kind of evidence. Beyond a reasonable
8 doubt the government's burden never ceases. They must always
9 convince you of that.

10 Mr. Levites has spent a lot of time telling you
11 what he thinks I am going to tell you. And believe me,
12 as he was saying that, I didn't know what I was going to
13 tell you. But, thankfully, I have the opportunity now to tell
14 you. Not what Mr. Levites says I am going to tell you, but
15 what I am going to tell you and what you are going to hear.

16 There are two witnesses in this case. Two.
17 The first one was Special Agent O'Brien, the second was
18 Special Agent McNenney who acted in an undercover capacity.
19 Those are the only two witnesses. There are only three
20 incidents that we are concerned with. Three. Whether
21 there was a sale of one of the handguns on October 5th,
22 whether there was a sale of the second handgun on October
23 6th, and whether there was a sale of a rifle on November
24 4th. All of 1976.

25 I would like to make one point before I go into

1 el/lf

2 acting in a matter of importance, then you have a reasonable
3 doubt and in that circumstance it is your duty to acquit.
4 On the other hand, if after an impartial and fair consideration
5 of all of the evidence you can candidly and honestly say
6 that you do have an abiding conviction of the defendant's
7 guilt, such a conviction as would make you willing to
8 act on a most important matter in your own life, then you
9 have a reasonable doubt and under such circumstance it's
10 your duty to convict.

11 One final word. Proof beyond a reasonable doubt
12 is not proof to a positive certainty or beyond all possible
13 doubt. If that were the rule, it would be impossible to
14 prove anything because controverted facts are not susceptible
15 to mathematical computation. As a consequence, the law
16 in a criminal case is that it is sufficient if the proof
17 be beyond a reasonable doubt, not beyond all possible doubt.

18 Before I touch upon the statutes and the indictment
19 directly, let me mention one thing.

20 There was brought up the possibility of you
21 speculating outside of the evidence. The possibility as to
22 what these instruments might be used for. That's totally
23 outside the evidence. If you want to speculate as to such
24 a thing, don't do it in the jury room. But you can go home
25 and speculate that these items and they are or could be used

1 el/lf

2 in this manner, could be used in the doctor's skit of

3 this was burlesque, or they could be used, as
4 they are, as background testimony to Tchaikovsky's 1812
5 Overture. But I told you, don't speculate, work with the
6 evidence as it has come before you. That is all you are
7 required to do. Keep your eye on what the charge is, and
8 keep your eye on what the evidence is.

9 In the federal system there are no crimes except
10 those that are defined or created by statute or laws
11 written by Congress. In this case the charges, the accusa-
12 tions made against this defendant are made under certain
13 federal laws and I don't believe it's necessary for you to
14 know the exact words of the law. Nevertheless, I think
15 it would be a help if I outlined them so that they would
16 serve as a basic underpinning for your later consideration
17 of the evidence.

18 Title 18, United States Code, Section 922 A1,
19 provides in part, it shall be unlawful for any person except
20 a licensed dealer, licensed importer, licensed manufacturer,
21 to engage in the business of importing, manufacturing, or
22 dealing in firearms or ammunition. The indictment alleges
23 three separate violations of this law. Each alleged
24 violation is contained in a separate count and I will read
25 the pertinent part of the indictment to you.

1 rdsjb

2 to say?

3 MR. LEVITES: No, your Honor. I think from
4 the facts that emerged during the course of the proceedings,
5 you have before you all that you need to know.

6 THE COURT: There is one question still float-
7 ing around in my mind. The defendant asked for and had
8 a witness appear. The witness would not testify. It's
9 my understanding that the witness himself was on trial
10 for homicide.

11 MR. LIGHT: I can try to enlighten the Court
12 because I have looked into that development. I think that
13 is the witness we know as Bryant. I don't know his full
14 name.

15 THE COURT: I don't know who he is. All I
16 know is the man would not testify.

17 MR. LIGHT: The problem that Mr. Acevedo and
18 his family related to me, it's the defendant's contention,
19 and it was his contention with the probation report, his
20 contention when I saw him at the MCC, and his family and
21 friends that are in court, and you will see from the pro-
22 bation report what a hard worker he is, the grocery store,
23 the hours he went in, and I will go into that in a little
24 while.

25 But this fellow Bryant, who I think was the

1 rdsjb

2 informant in this case, brought these guns to the defen-
3 dant as security to borrow money.

4 Now, I am not condoning it because there is
5 no such thing as a legal establishment where you lend
6 money and take guns as collateral. But this fellow, who
7 I believe is the witness, who if had the opportunity under
8 different circumstances or if he was handled properly by
9 the attorney or an investigator, and he was at Riker's
10 Island, rather than bring him to court and have the agents
11 or the U. S. Attorney speak to him.

12 Now, I wasn't present and it's what I have
13 been told. It's this witness, who, if given the oppor-
14 tunity, may have disclosed to the court that he set the
15 whole thing up to try and beat a state case or problems
16 that he had. He brought the undercover agents to the
17 store, introduced him as a Cuban friend of his, and
18 supposedly he was going to buy the guns and instead of
19 giving the money to Bryant, the money was going to be
20 turned over to Mr. Acevedo for a two or \$300 loan. That's
21 my understanding.

22 THE COURT: Mr. Light, you didn't answer my
23 question. My question is, isn't it true that that man
24 was at that time under indictment for homicide?

25 MR. LIGHT: We believe so, your Honor. We

VSA

47A

UNITED STATES DISTRICT COURT

IN FORM
4/2/15

Docket Number 77CR184

T. DUFFY
(District Court Judge)

Angelo Luis Acevedo

NOTICE OF APPEAL

Notice is hereby given that _____ appeals to
the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ Order ☐ other
(specify) _____ entered in this action on Sept 7 - 1977
(Date)

Date 9/7/77
To: ANGLO LUIS ACEVEDO
307 E. 102 ST
NYC

Address MARTIN LIGHT
66 COURT ST
Bklyn NY.

Phone Number (212) 834 8888

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

- ☒ I am ordering a transcript
☐ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

- ☒ Prepare transcript of
☒ Pre-trial proceedings
☒ Trial
☐ Sentence
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S SIGNATURE [Signature] DATE 9/7/77

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.
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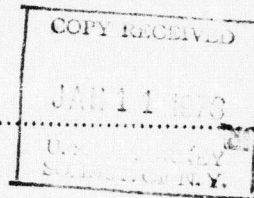
Date _____ Signature _____
(Court Reporter)

For COPY FOR DEFENDANT

Service of three (3) copies of the within
is hereby admitted

this day of

.....
Attorney(s) for



RECEIVED